

TRANSMITTAL OF APPEAL BRIEFDocket No.
MHM-00307/29

In re Application of: Michael A. Masini

Application No.
10/706,570-Conf. #6665Filing Date
November 12, 2003Examiner
T. PatelGroup Art Unit
3772

Invention: INVERTIBLE WOUND DRESSING AND METHOD OF MAKING THE SAME

TO THE COMMISSIONER OF PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal
filed: June 11, 2007 .

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This sheet is submitted in duplicate./John G. Posa/Dated: August 13, 2007

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of: Michael A. Masini

Application No.: 10/706,570

Confirmation No.: 6665

Filed: November 12, 2003

Art Unit: 3772

For: INVERTIBLE WOUND DRESSING AND
METHOD OF MAKING THE SAME

Examiner: T. Patel

APPELLANT'S APPEAL BRIEF UNDER 37 CFR §41.37

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I. Real Party in Interest

The real party in interest in this case is Michael A. Masini, Applicant and Appellant.

II. Related Appeals and Interferences

There are no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

The present continuation application was filed with 10 claims. Original claims 1-10 were canceled and new claims 11-28 were added by preliminary amendment in December 2003. Claims 29-42 were added by in March 2004. Claim 24 was canceled and new claims 43-44 were added by amendment in November 2006. Claims 13-14, 18-19 and 29-42 have been withdrawn from consideration. Claims 11-23 and 25-44 are pending; however, claims 11-12, 15-17, 20-23, 25-28, 43 and 44 are rejected and under appeal. Claims 11, 16, and 28 are the independent claims.

IV. Status of Amendments Filed Subsequent Final Rejection

No after-final amendments have been filed.

V. Summary of Claimed Subject Matter

Independent claim 11 is directed to packaging for a bandage having a patient-contacting surface with a peripheral edge, the patient-contacting surface, including an absorbent layer completely surrounded by an adhesive that extends to the peripheral edge in all directions, comprising first and second removable sheets, both extending beyond the peripheral edge of the bandage and peripherally joined so that the bandage is contained between the removable sheets until use; and wherein one of sheets is in direct contact with the entire adhesive on the patient-contacting surface until that sheet is removed. (Specification at page 10, line 17 to page 11, line 13; Figure 1B).

Independent claim 16 is directed to a bandage construction, consisting of a bandage portion having a patient-contacting front surface with an adhesive, a back surface and a peripheral edge; and a packaging portion including first and second removable sheets, both extending beyond the peripheral edge of the bandage, and wherein the first and second removable sheets are peripherally joined so that the bandage is contained between the removable sheets until use. (Specification at page 10, line 17 to page 11, line 13; Figure 1B).

Independent claim 28 is directed to a bandage construction, consisting of a bandage portion with a patient-contacting surface including an absorbent layer and an adhesive; and two removable packaging sheets, one on either side of the bandage portion, such that one of the sheets acts as a release layer to expose the adhesive for use. (Specification at page 10, line 17 to page 11, line 13; Figure 1B).

VI. Grounds of Rejection To Be Reviewed On Appeal

A. The rejection of claims 11, 12, and 15, which stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,333,753 to Etheredge; and

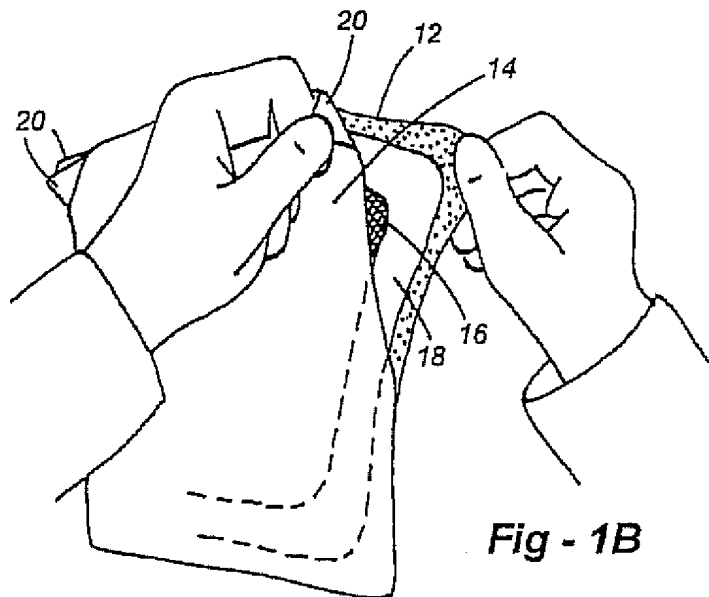
B. The rejection of claims 16, 17, 20-23, 25, 26, 28, 43 and 44, where claims 16, 17, 20-23, 26-28 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No.

5,333,753 to Etheredge; claim 25 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Patent No. 5,333,753 to Etheredge in view of U.S. Patent No. 2,897,961 to Bush; and claims 43 and 44 under 35 U.S.C. §103(a) as being unpatentable over Patent No. 5,333,753 to Etheredge in view of U.S. Patent No. 5,586,971 to Newman.

VII. Argument

A. The Rejection of Claims 11, 12 and 15.

Appellant's claim 11 resides in packaging for a bandage having a patient-contacting surface with a peripheral edge. The patient-contacting surface includes an absorbent layer that is completely surrounded by an adhesive that extends to the peripheral edge in all directions, comprising. The packaging comprises first and second removable sheets, both extending beyond the peripheral edge of the bandage and peripherally joined so that the bandage is contained between the removable sheets until use. One of sheets is in direct contact with the entire adhesive on the patient-contacting surface until that sheet is removed. This is shown in Figure 1B of Appellant's specification, reproduced below:



The bandage itself includes absorbent portion 16 completely surrounded by adhesive, patient-contacting surface 18. The first and second removable sheets are 12 and 14. Claim 11 stand rejected under 35 U.S.C. §102(b) over U.S. Patent No. 5,333,753 to Etheredge. To assist in understanding the Examiner's rejection, Figures 2 and 3 of Etheredge are also reproduced below:

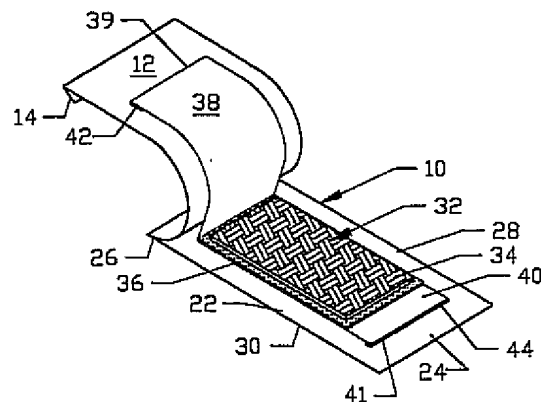


Fig. 2

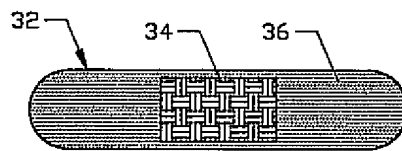


Fig. 3

The Examiner's argument is that Etheredge discloses "a bandage (32) having a patient-contacting surface with a peripheral edge (outer edges of device seen in fig. 3), the patient contacting surface (36), including an absorbent layer (34) completely surrounded by an adhesive that extends to the peripheral edge in all directions ... comprising first and second removable sheets (12, 22), both extending beyond the peripheral edge of the bandage and peripherally joined ...so that the bandage is contained within the removable sheets until use (see Fig 2)" (Final OA, p. 2) So far, everything the Examiner has said is accurate. However, the Examiner's last statement, that "one of the sheets is in direct contact with the entire adhesive (42) on the patient-contacting surface until that sheet is removed" is incorrect. While item 42 is an adhesive, it is a small strip that keeps sheet 12 attached to sheet 38. This adhesive is *not* adhesive (42) on the patient-contacting surface of the bandage. Indeed, sheet 38 *prevents* the sheet 12 from making contact to any of the adhesive (42) on the patient-contacting surface of the bandage.

Anticipation may be established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Systems, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Moreover, anticipation requires the presence of all elements of a claimed invention as arranged in

the claim, such that a disclosure "that 'almost' meets that standard does not 'anticipate'." Connell v. Sears, Roebuck Co., 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983). Even if the Examiner intended to use sheets 38, 40 as opposed to sheets 12, 22 *prima facie* anticipation would not be established since sheets 38, 40 do not extend past the periphery of the bandage in all directions.

B. The rejection of claims 16, 17, 20-23, 25, 26, 28, 43 and 44.

Of these claims, independent claims 16 and 28 are *consisting of* claims. As such, the rejection under 35 U.S.C. §102(b) over Etheredge is improper, as is the rejections under 35 USC §103. Appellant need not remind the Board (or the Examiner) that the transitional phrase "consisting of" excludes any element, step, or ingredient not specified in the claim. *In re Gray*, 53 F.2d 520, 11 USPQ 255 (CCPA 1931); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948). The packaging system of Etheredge includes many other elements, including the sheets 38, 40 and the adhesive strip 42. Accordingly *prima facie* anticipation has not been established.

With regard to the rejection of claims 25, 43 and 44, combining the primary reference of Etheredge with secondary references adds even more elements to the basic combination, thereby further distinguishing over Appellant's *consisting of* claims. Method claim 27 comprises the step of providing the bandage construction of claim 16 (which is a *consisting of* claim). The rest of the method is immaterial because the first step cannot be met. Since the bandage structure of Etheredge includes multiple additional elements, the bandage construction of claim 16 cannot be provided the way the claim is written.

Conclusion

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board's concurrence at this time.

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Respectfully submitted,

By: 

Date: August 13, 2007

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APPENDIX A
CLAIMS ON APPEAL

11. Packaging for a bandage having a patient-contacting surface with a peripheral edge, the patient-contacting surface, including an absorbent layer completely surrounded by an adhesive that extends to the peripheral edge in all directions, comprising:

first and second removable sheets, both extending beyond the peripheral edge of the bandage and peripherally joined so that the bandage is contained between the removable sheets until use; and

wherein one of sheets is in direct contact with the entire adhesive on the patient-contacting surface until that sheet is removed.

12. The packaging of claim 11, wherein the first and second removable sheets are made of paper.

15. The packaging of claim 11, wherein one of the first and second removable sheets includes a dog-ear tab to assist in removal.

16. A bandage construction, consisting of a bandage portion having a patient-contacting front surface with an adhesive, a back surface and a peripheral edge; and

a packaging portion including first and second removable sheets, both extending beyond the peripheral edge of the bandage, and wherein the first and second removable sheets are peripherally joined so that the bandage is contained between the removable sheets until use.

17. The bandage construction of claim 16, wherein the first and second removable sheets are made of paper.

20. The bandage construction of claim 16, wherein one of the first and second removable sheets includes a dog-ear tab to assist in removal.

21. The bandage construction of claim 16, wherein the first and second removable sheets are peripherally joined with an adhesive.

22. The bandage construction of claim 16, wherein the bandage portion comprises:
a flexible backing layer; and
an absorbent layer bonded to the flexible backing layer.

23. The bandage construction of claim 22, wherein the flexible backing layer extends beyond the absorbent layer.

25. The bandage construction of claim 22, wherein the flexible backing layer is fluid-impermeable.

26. The bandage construction of claim 22, wherein the adhesive is disposed on flexible backing layer and surrounds the absorbent layer to form an island-type bandage portion.

27. A method of applying a bandage, comprising the steps of:
providing the bandage construction of claim 16;
removing one of the first and second removable sheets to expose the entire patient-contacting front surface;
applying the bandage portion to a recipient using the adhesive; and
removing the other removable sheet from the back surface of the bandage portion.

28. A bandage construction, consisting of:
a bandage portion with a patient-contacting surface including an absorbent layer and an adhesive; and
two removable packaging sheets, one on either side of the bandage portion, such that one of the sheets acts as a release layer to expose the adhesive for use.

43. The bandage construction of claim 16, wherein:

the bandage portion has two ends and a mid section; and
wherein bandage portion is tapered such that the mid section is wider than one or both of
the ends.

44. The bandage construction of claim 28, wherein:
the bandage portion has two ends and a mid section; and
wherein bandage portion is tapered such that the mid section is wider than one or both of
the ends.

APPENDIX B

EVIDENCE

None.

APPENDIX C
RELATED PROCEEDINGS

None.